

1 Q When he was at the counter was he not able to sit  
2 while he was there?

3 A Well, the counter is probably about this high so I  
4 guess --

5 MR. ANGINO: Pointing out about four or five feet.

6 THE WITNESS: Four or five feet, I'm sorry, yes. So  
7 to actually see the customer on the other side, you'd have to  
8 stand. You could sit while you were waiting for customers or  
9 sit to the side. He has a desk off to the side of the  
10 restaurant a little outside of the customer area.

11 BY MR. WOLGEMUTH:

12 Q Okay. And in terms of how long he could stand over  
13 say an eight hour period, do you have an opinion as to what  
14 that amount of time would be or --

15 A In aggregate?

16 Q In aggregate or alternate sitting, standing?

17 A Again, my impression is that he'd probably be  
18 changing positions every, you know, 15 to 20 minutes maybe.

19 Q Doctor, you also report no heavy lifting.

20 A Correct.

21 Q And just what is that second --

22 A Secondary to back.

23 Q Okay.

24 A It wasn't his heart that was restricting him. It was  
25 his back that was restricting that.

1 Q When you say no heavy lifting, what type of weight  
2 are you referring to?

3 A Greater than 20 pounds.

4 Q Any restrictions on lifting lighter weights than  
5 that?

6 A I did not give him any at that point, no.

7 Q Do you have any medical reasons or any opinion that  
8 would cause you to prescribe restrictions less than 20 pounds?

9 A Not at that point, no.

10 Q In terms of lifting lower or less than 20 pounds, is  
11 that something he could do constantly or occasionally over --

12 A Probably occasionally at best at that point.

13 Q And I believe you also said that he can't work in a  
14 stressful situation.

15 A Correct.

16 Q And, again, exactly what type of stressful situation  
17 were you referring to?

18 A Well, again, it was intentionally vague because  
19 clearly it was getting to the point at that point that his  
20 restaurant itself was a stressful situation, that just being  
21 there constituted the stress.

22 Q Okay. And so that's what you're referring to.

23 A Correct, just being at the restaurant because based  
24 upon both his report and his wife's report, just being there  
25 seemed to set him off, and, again, the emotional lability, you



1 know, quick to anger, quick to being upset and for very --  
2 probably very small provocation.

3 Q At that time you opined that his prognosis for  
4 recovery was fair?

5 A That's what I thought.

6 Q Doctor, I'd like to refer you next to a letter that  
7 you had sent to an insurance company Paul Revere dated November  
8 3rd, 2000. Do you have that in your file?

9 A If you have it, I would --

10 Q I'll look for it.

11 A I've got it.

12 Q At that time you reported that his heart condition  
13 was stabilized and not a great limitation on him in the future.

14 A Correct.

15 Q Do you still believe that his heart condition is  
16 stabilized and it's not a great limitation on him?

17 A At this point I think his heart does not limit him at  
18 all. If he continues to smoke which unfortunately he has begun  
19 again in response to his stress, he's certainly at risk for a  
20 future heart attack, but at this point his heart muscle works  
21 normally.

22 Q I believe you also had reported that his back was  
23 aggravated by weight gain?

24 A Correct.

25 Q And that he shouldn't work at the restaurant.

1 A Correct.

2 Q And, again, I believe you identified no prolonged  
3 standing and he had difficulty bending and no heavy lifting?

4 A Correct.

5 Q Again, that's only what, two weeks prior to your  
6 November 15th, 2000 so you're referring to the same weights?

7 A Correct.

8 Q Now, at that time, Doctor, in November of 2000, did  
9 you have any indication of how long Mr. Mazzamuto would stand  
10 during the day while he worked?

11 A Again, I don't have specifics as to what exactly he  
12 would do, you know, how long he stood, how long he sat, you  
13 know, while he was at the restaurant, no.

14 Q In terms of like bending, would same thing, you  
15 wouldn't really have any idea how long he would have to bend  
16 during the time he would work at the restaurant?

17 A I have no professional way of knowing how often he  
18 would have to bend. I assume he would have to do it on a  
19 fairly frequent basis. Having seen the restaurant, you know,  
20 there's food stuffs on various shelves, there's pizza ovens  
21 that are up high, there's things down below the counter. I  
22 would assume it's a constant motion but that's as a customer,  
23 not as a physician.

24 Q And, again, lifting, same thing, you never really saw  
25 him lifting anything there?



1           A     No, I mean, I've seen, you know, I've seen big cans  
2 of institutional food products that are used to make the subs  
3 and the vegetables and things like that. I assume that they  
4 probably weigh, you know, 10 or 12 pounds, you know, those  
5 sorts of things.

6           Q     But there was no problem lifting that kind of weight  
7 though?

8           A     Not one time, but I think since bending without  
9 lifting anything is a problem, obviously if you have to lift  
10 something of light weight, just the fact that you had to bend  
11 to lift it would be a problem in and of itself.

12          Q     Doctor, let me ask you a question. Have you treated  
13 individuals with similar type of back problems that  
14 Mr. Mazzamuto has that continue to work?

15          A     I have people who have back pain who continue to  
16 work. It's hard to say that they have, you know, the same as,  
17 you know, as Mr. Mazzamuto has. His MRIs have sort of numerous  
18 findings on them, and the problem is that pain is not something  
19 you can objectively measure with a test or a scan or an X-ray.  
20 And, you know, so much of it comes from, you know, what the  
21 symptoms are presented to you. So I would say that I probably  
22 have patients who have back pain who continue to work. My  
23 impression of Mr. Mazzamuto is that he has fairly significant  
24 back pain and probably I don't have people with his degree of  
25 discomfort that hold down physical jobs, you know, physically



1 demanding jobs.

2 Q Would you have people that have his level of  
3 discomfort holding down sedentary or light type of jobs?

4 A I probably have people with his level of discomfort  
5 who at times can hold down light jobs though others because of  
6 even sitting causing problems end up in difficulty and end up  
7 having to restrict their work because of that.

8 Q So you agree with me that as a physician it's very  
9 difficult to objectively quantify whether somebody is  
10 completely disabled without assuming what they're telling you  
11 and assuming their level of pain as truthful?

12 A Well, again, disabled is not a medical definition,  
13 you know, and so it's there is no exact way of monitoring does  
14 somebody's pain that they report equal the pain that they feel.  
15 There's absolutely no way of knowing that. He does not have  
16 normal X-rays of his back. He does not have normal MRIs, you  
17 know, of his spine. He has seen Dr. Gelb who, you know, who  
18 has at least stated that surgery might be an option to help  
19 reduce his pain. Mr. Mazzamuto is very fearful of undergoing  
20 surgery and that has not been pursued. But, yes, you know, you  
21 can never say a hundred percent that what he's reporting as  
22 pain is true. You have to accept some of what the person tells  
23 you.

24 Q And maybe a different way of asking that or similar  
25 question, Doctor, if another physician like yourself or a back



1 specialist looked at Mr. Mazzamuto's records, every record that  
2 you have, and would it be reasonable for him, medically  
3 reasonable for him to say after looking at all those records  
4 saying, Mr. Mazzamuto, you could do a job that is sedentary or  
5 light work?

6 A I guess anything is possible. I think it's unlikely.

7 Q I don't think I asked you if it was possible or  
8 unlikely. I asked you whether it was medically reasonable for  
9 another physician to look at those same records and deliver an  
10 opinion or prepare an opinion saying that he could do those or  
11 that he is able to perform sedentary or light duty work.

12 A I don't think it would be reasonable but I assume  
13 another physician might say that or could say that.

14 Q I understand that that you might not agree with that  
15 opinion.

16 A Right.

17 Q But you at least have to acknowledge that that  
18 opinion could be reasonable.

19 MR. ANGINO: He said no.

20 THE WITNESS: I said I don't think it's reasonable.  
21 That doesn't mean another physician won't find it to be  
22 reasonable.

23 BY MR. WOLGEMUTH:

24 Q That's fair enough. And just so I understand,  
25 Doctor, I'm sure you've said this twice already, but there's



1 nothing with his cardiac condition preventing him from doing  
2 any type of sedentary or light type of work?

3 A His cardiac condition at this point other than  
4 fueling his anxiety has no limitations on him at this point.

5 Q Now, Doctor, is there there anything preventing --  
6 anything medically preventing Mr. Mazzamuto from doing  
7 bookkeeping type work?

8 A Again, having to change positions frequently might  
9 make it uncomfortable for him. Whether or not he -- can he  
10 push a button with a calculator, yes, he can. Can he sit and  
11 concentrate for long periods of time to do that, I don't know  
12 that he can.

13 Q You agree with me that your records other than the  
14 hypnagogic hallucination and I think one reference to some  
15 confusion didn't indicate any type of cognitive problems that  
16 he's having from his anxiety, depression and/or the medications  
17 you're prescribing for it?

18 A He does have problems with concentration in that  
19 again because he gets upset so easily with things that I think  
20 he is easily distractible that again I've never been a  
21 bookkeeper so I don't know what level of concentration it takes  
22 to look at long series of figures and numbers and dutifully put  
23 them in all the little spots. I think that would be difficult  
24 for him, mainly, you know, from the back because it's hard to  
25 sit in a position hunched over a ledger and from the mind



1 position because again his anxiety again is unrelenting and I  
2 think it would interfere with his concentration. Anxiety and  
3 depression bring with them often difficulty with concentrating,  
4 difficulty with memory because the brain is otherwise occupied  
5 turning away on these sort of unreasonable fears and thoughts  
6 so that other things that you're supposed to be paying  
7 attention to you don't. Your attention is not as sharp as it  
8 should be. Things can be easily missed, things can be easily  
9 forgotten. So, again, I wouldn't want him doing my books.

10 Q Do you agree with me that there's nothing in your  
11 notes reflecting he had any problem adding numbers, subtracting  
12 numbers?

13 A There's nothing in my notes to reflect that.

14 Q Any type of medical condition or diagnosis that would  
15 prevent him from performing office duties such as calling food  
16 suppliers, checking prices, talking to service men, talking to  
17 customers?

18 A Well, again, other than the fact that if something  
19 went wrong on the phone, he might fly into a rage at the  
20 supplier who was late or who didn't understand what he was  
21 saying or, again, he can physically dial the phone and talk on  
22 the phone as long as, you know, he has an accent and here in  
23 central Pennsylvania some people have trouble talking with  
24 people with accents, but I could see where he may not again be  
25 able to sort of coordinate all the things that one needs to



1 coordinate when you're trying to arrange shipments with various  
2 suppliers because again that lack of concentration, that lack  
3 of ability to sort of focus. When you're chronically anxious,  
4 you lose your focus. You get overwhelmed by the details so  
5 that you can't put things in order and say, okay, I'm going to  
6 take on task one, then move on to task two, then move on to  
7 task three and organize your life. You see tasks one through a  
8 hundred in front of you and you can't figure out where to start  
9 and you get overwhelmed. That's sort of a common problem you  
10 see with that and I think Mr. Mazzamuto would have that  
11 problem.

12 Q You say you think he would have it. Is there any  
13 evidence reflected in your notes that he is having those  
14 problems?

15 A I don't think he's doing those things so I did not  
16 put that in my notes.

17 Q To your knowledge, Doctor, during the year 2001 and  
18 2002, has he been performing any of the bookkeeping duties or  
19 office duties at his restaurant?

20 A That I don't know. You'd have to ask him and his  
21 wife. My understanding or my thought, and, again, this is not  
22 based on him telling me directly, my thought is that his wife  
23 has taken over more and more of that. That was my assumption  
24 anyway. It may not be correct.

25 Q Any medical condition that would prevent him from



1 supervising employees?

2 A Again, ditto from my last answer. The fact that  
3 difficulty with his personality, small things his employees  
4 might do again causing him to become incredibly emotional and  
5 incredibly upset, you know, going off in anger or rage that  
6 again I would think would make him a very poor supervisor.

7 Q So I guess what you're saying is that it's not that  
8 it would prevent him from doing it, it's just that he could  
9 have ramifications from employees quitting or --

10 A Well, again, that's like saying is he able to fly a  
11 plane. Well, I assume he could sit at the controls. Doesn't  
12 mean the plane would land and then crash into a building. You  
13 know, the guys in Al Qaeda, they didn't know how to land. They  
14 knew how to fly the plane so were they qualified to fly the  
15 plane. That's your call.

16 Q Doctor, there was a physician I believe employed by  
17 Unum that opined on March 27 of 2001 that he found no evidence  
18 of any cardiac condition which would preclude sedentary or  
19 light physical activity on a full-time basis. I'm assuming you  
20 would agree with that?

21 A Already have.

22 Q Again, from your testimony, especially the last few  
23 questions that I asked you, it appears that the majority of his  
24 problems presently are psychiatric.

25 A Here's my general take on Mr. Mazzamuto. The primary



1 problem that is limiting his sort of functioning with his wife  
2 and his family is his psychiatric problem, that the fact that  
3 he has this now sort of unrelenting anxiety, this depression,  
4 this sort of irrational fears about, well, maybe not so  
5 irrational in some degree because he's smoking again, he's  
6 gained weight, he's engaging in behaviors which could put him  
7 on a very desperate course.

8 His heart condition while not in any way disabling at  
9 this point unfortunately I believe triggered a lot of this  
10 anxiety. You know, up until that point he was a tough Italian  
11 guy who could do anything and he could smoke and he could run  
12 his restaurant. His back bothered him. This heart event I  
13 think showed in his mortality. His dad I think died of heart  
14 disease or vascular disease of some kind. So the heart problem  
15 is only there in that it fuels his anxiety. Again, his back  
16 problem is a big limitation. You know, this is not a guy who  
17 programs computers for a living. He doesn't do brain work as  
18 his primary job so there's lots of physical things I think he  
19 can't do because of his back, but, you know, again, my opinion  
20 and I've stated it several times is it's his psychiatric  
21 problems right now that are his primary limiting factor. His  
22 back problem runs a close second. His heart other than being  
23 an impetus to his anxiety, again his heart works fine right  
24 now. That's not an issue. It's not he's going to have a heart  
25 attack if he picks up a can of tomatoes.



1 Q And if Mr. Mazzamuto identified his work duties as 20  
2 percent bookkeeping, 20 percent office duties and 60 percent  
3 supervising employees, anything in his back condition that  
4 would prevent him from doing those type of job duties?

5 A I think he would be uncomfortable again with sitting  
6 over a desk with the bookkeeping. You know, what can people  
7 do, pain tolerance and things like that are all individual.  
8 Again, with the back, if that was his only issue, could he  
9 muddle through further, he probably could. I think it's the  
10 whole constellation though. You can't just isolate a  
11 particular, you know, it's just the back or it's just the heart  
12 or it's just the anxiety. It's his work and his job and his  
13 life are one big milieu and I think his medical conditions all  
14 tie together. It's very hard to tease out individual things  
15 and say, well, you can -- I mean, I can't do it. I can't tease  
16 those things apart.

17 Q Doctor, at what point in your treatment of  
18 Mr. Mazzamuto did his psychiatric duties or psychiatric  
19 conditions get to the point where, you know, as you testified  
20 just recently that he might have problems concentrating, he  
21 might have problems doing other things? Can you give me a  
22 point as to --

23 A Well, I think there was some suspicion of it. I  
24 think when his wife came to talk to me that she was concerned,  
25 you know, again to give me another view of what he does because



1 again I don't see him day to day at work. I don't see him day  
2 to day at home. And I think when her level of concern was such  
3 that she actually scheduled an appointment to tell me, you  
4 know, Vinny is in trouble, Vinny is having all these problems,  
5 and I can look back at the notes and see what that date was. I  
6 mean, I think that's when it became more, gee, we have to get  
7 his anxiety down because that way he will be able to quit smoking  
8 so he won't have another heart attack to, gee, this guy is  
9 really having trouble functioning now.

10 It was -- it sounded like he was potentially going to  
11 have marital problems as a result of this that, you know, how  
12 he was interacting with her was becoming a problem, you know,  
13 above and beyond what goes on at the restaurant so I think  
14 whatever date that was it was -- I can look back but there was  
15 a brief paragraph that just said that his wife had come to  
16 speak to me.

17 I think that's probably when it really became clear  
18 that the psychiatric problem had really manifested itself and  
19 that we weren't -- you know, he wasn't getting as good symptom  
20 relief as maybe I thought he was when he would come in by  
21 himself, and, you know, again, he puts on -- you know, he wants  
22 to put on a good show, how are you doing, well, not bad, you  
23 know, again so I think that's when I got more of an idea that  
24 there was really something that this was the biggest problem  
25 and the back probably moved down on the list.



1 Q And would you agree, Doctor, that basically he  
2 completed cardiac rehab that there was nothing medically  
3 limiting or cardiac wise limiting him from performing his job  
4 duties at the restaurant?

5 A Correct.

6 Q And from say January of 2001 through the present, is  
7 there anything that you can identify other than he might have a  
8 problem like stooping over a desk doing book work related to  
9 his back that would prevent him from doing the job duties of,  
10 you know, office duties?

11 MR. ANGINO: I have to object to the form of the  
12 question. He has gone on for probably 15, 20 minutes showing  
13 you all the ways in which he's limited from doing those things.

14 MR. WOLGEMUTH: I don't think that's really an  
15 objection to the form of the question, is it?

16 MR. ANGINO: It is because, you know, you're asking  
17 him now to isolate 15 minutes of testimony. Are you not?

18 BY MR. WOLGEMUTH:

19 Q I'm asking in terms of his job duties of bookkeeping,  
20 office duties and supervising employees, during that time  
21 period January of 2001 to the present, are there any specific  
22 job duties other than doing bookkeeping that you think his back  
23 would prevent him from doing?

24 A Well, oh, I think that supervising employees requires  
25 that you sort of get up and down, and, you know, again, it's



1 not IBM with 50,000 employees. It's like a couple guys behind  
2 a counter, and again, and the problem that came up is that if  
3 something isn't going right, he feels he has to jump in, he  
4 gets upset, they're not doing it right. So, yeah, but what's  
5 the back and what's -- you know, again, I can't say that the  
6 back by itself, but if he's sitting there supervising and he  
7 doesn't think that pizza man A is doing the right thing and he  
8 jumps up to try to do something and then his back hurts more  
9 and then he gets really upset with the guy, again, I think it's  
10 a combination of things. I think the back could figure into  
11 his ability to be a good supervisor because a supervisor has to  
12 be able to do a lot of the stuff that he's supervising.

13           You know, these are people that, you know, I don't  
14 know what the turnover in his restaurant is, but, you know, my  
15 understanding of the restaurant trade is that other than his  
16 kids who don't turnover at all, well, there are -- again, you  
17 have to train people, you have to show them what to do, it's  
18 not a high paying job where you have job stability, and, you  
19 know, maybe not the highest motivation of people work in pizza  
20 shops as paid employees. If you're a family member, you work  
21 there, you're motivated, but if you're a paid employee, you  
22 could be a college kid, you could be somebody who doesn't  
23 really give a damn, and, again, that sets up a scenario where  
24 well, he's got to show them how to do it, he's go to do this,  
25 you do it this way, now you hurt your back, then you get upset



1 because the guy is not doing it right. So I think there's lots  
2 of scenarios where as the combination of his back and his  
3 mental state that he would not be a good supervisor at this  
4 point.

5 Q Doctor, do you have the PDR?

6 A Dr. Brazel has the 2002 PDR right here. Is that what  
7 you're working out of?

8 Q Yes, I'm looking at the page that discusses  
9 Wellbutrin.

10 A Do you have a page number on your copy?

11 Q Unfortunately I don't.

12 A We'll get it. All right.

13 A Okay. I've got Wellbutrin in front of me.

14 Q I'm looking at the I guess the precautions and  
15 warnings part of it.

16 A All right. Okay. I have the warnings.

17 Q It says here that Wellbutrin should not be used in  
18 combination with Zyban or any other medications that contain  
19 Bupropion.

20 A Right.

21 Q Exactly what is Bupropion?

22 A Wellbutrin. That's the generic name so what they're  
23 saying is if you're on Wellbutrin, then you shouldn't give him  
24 Zyban because you're really giving him a double dose of the  
25 same thing.



1           Q     I got it. Okay. And some of the side effects of  
2 taking this, I know we discussed them earlier but I believe  
3 that they can include delusions, hallucinations, psychosis,  
4 paranoia and confusion?

5           A     They all include that. It doesn't tell you how  
6 frequently it happens though. Again, if you look up any  
7 anti-depressant or any anxiety agent or any antipsychotic  
8 you'll probably get the exact same list because these things,  
9 they're listed if anybody gets it in clinical trials, it's  
10 listed as a potential side effect. It doesn't give you any  
11 kind of a weighted average that it's a common side effect or  
12 it's a frequent side effect. If somebody takes the medicine  
13 and they get killed in a car crash, that goes down as a  
14 possible side effect of the medicine because maybe it was  
15 somehow influenced so it's all possible but it doesn't mean  
16 it's likely.

17           MR. WOLGEMUTH: Okay. All right, Doctor. That's all  
18 the questions I have.

19                           CROSS-EXAMINATION

20           BY MR. ANGINO:

21           Q     Doctor, my name is Richard Angino, and although I  
22 normally don't ask many questions at a discovery deposition, I  
23 think in this particular situation I'd like to ask you a few.

24                   Doctor, I've had an opportunity to go over your  
25 records as has counsel for the defense, and I'm looking at an



1 attending physician's statement and you don't have to look at  
2 it. It's dated 10-23-96. And the physician's statement  
3 requires that you and other doctors complete what in this case  
4 are numerous questions that went from 1 through -- that go from  
5 1 to 17 and they include such questions as diagnosis and  
6 current conditions to disabled and how long people have been  
7 disabled and things such as that. And in this particular  
8 attending physician's statement, you indicated that Mr.  
9 Mazzamuto had been disabled from April -- I guess April 3, '96  
10 through October 23, '96 for low back and central spinal  
11 stenosis.

12 When you were going through your forms there, there  
13 appeared to be a fairly significant number of forms like this  
14 that you've been asked to complete; is that correct?

15 A That's correct.

16 Q And do they come to you as often as monthly?

17 A Sometimes.

18 Q And so that you've been filling out these forms  
19 apparently for Mr. Mazzamuto at different intervals ever since  
20 1996; is that right?

21 A That's correct.

22 Q And so you've told this insurance company that he was  
23 totally disabled at least for that period of time back in 1996;  
24 is that right?

25 A Correct.



1 Q And you told them then that he had a central spinal  
2 stenosis and he had low back pain since 1996 and before that;  
3 is that right?

4 A Correct.

5 Q And so this insurance company has known at least as  
6 to the back problems back to 1996; is that right?

7 A Correct.

8 Q So when Mr. Mazzamuto has his heart condition and  
9 also had back problems, those back problems had a long history;  
10 is that right?

11 A Correct.

12 Q And this insurance company knew about those back  
13 problems for this long history; is that right?

14 A Correct.

15 Q Now, as far as you know, Mr. Mazzamuto has done the  
16 same type of job as long as he's been working as far as you  
17 know; is that right?

18 A As far as I know since he came to America based on  
19 the pictures in his restaurant.

20 Q So this man from the time he came to this country has  
21 worked in that type of surrounding, and just from his back you  
22 indicated that he was totally disabled back in 1996; is that  
23 right?

24 A Correct.

25 Q Now, he did then go back to work for a period of time



1 until he had the heart condition, but would you anticipate that  
2 back condition to be getting better or worse as he aged?

3 A It gets worse over time.

4 Q So that this spinal stenosis won't go away; is that  
5 right?

6 A It will not.

7 Q And as he gets older, is that low back pain probably  
8 going to get worse as well?

9 A It will worsen because the arthritis and the disc  
10 disease that he's got will get worse.

11 Q So that if he was disabled in 1996 just from the back  
12 condition, what you're saying is after he had this heart attack  
13 and after he developed anxiety, he still had that back  
14 condition; is that right?

15 A Correct, the back is still there.

16 Q So an insurance company that now doesn't want to pay  
17 him because of the type of work he did, is there any difference  
18 in the type of work he did in '96?

19 A No, same job.

20 Q So if this insurance company back in '96 paid him for  
21 his disability just from his back but now doesn't want to pay  
22 him when he has the back, he has the anxiety and he had the  
23 initial heart condition, can you understand the basis for that?

24 MR. WOLGEMUTH: Objection.

25 BY MR. ANGINO:



1 Q I mean, can you medically understand the basis for  
2 that?

3 A Again, I cannot, no.

4 Q And, Doctor, although you were asked some questions  
5 about your expertise being an internist and treating adults,  
6 would a large percentage of your patients be older adults?

7 A Yes, the majority are older.

8 Q And when you have older adults, do you have patients  
9 that have back problems?

10 A Yes.

11 Q Do you have patients that have anxiety?

12 A Lots of them.

13 Q Do you have patients that have cardiac problems?

14 A Lots of them.

15 Q So whether you're an expert or not, you are obviously  
16 expert enough to be treating these patients for back problems,  
17 anxiety and for heart conditions; is that right?

18 A I think so.

19 Q And you feel you're qualified to treat them; is that  
20 right?

21 A I do.

22 Q And not only being qualified to treat them, are you  
23 qualified to be able to express a medical opinion as to whether  
24 you feel they're disabled from doing types of work if the types  
25 of work are described to you?



1 A I think so.

2 Q And in this particular case with Mr. Mazzamuto, you  
3 have not only what he's told you but you've -- I think you said  
4 10, 15 times at least have been to his restaurant; is that  
5 right?

6 A Correct.

7 Q So you've seen with your own eyes what he does; is  
8 that right?

9 A I've seen what goes on in the restaurant, correct.

10 Q When you see him and he's standing behind a counter  
11 that's four feet tall, you see a man that has to stand; is that  
12 right?

13 A Correct.

14 Q And when you see the kinds of cans that are around  
15 that have the product for the pizza, you assume somebody has to  
16 from time to time pick up those cans and things; is that right?

17 A Correct.

18 Q And even pizzas have some weight to them; is that  
19 right?

20 A Oh, yes, of course.

21 Q And as far as bending, stretching and all of those  
22 types of activities, have you seen Mr. Mazzamuto doing those  
23 things as he serves people?

24 A I have not directly witnessed it when I was there.

25 Q But you have directly witnessed his cooking; is that



1 right?

2 A Correct.

3 Q And you've witnessed the small type of operation that  
4 is there; is that right?

5 A Correct.

6 Q And you've witnessed that the people performing those  
7 operations have to do a variety of tasks; is that right?

8 A Lots of different movements and motions.

9 Q And as far as you know, Mrs. Mazzamuto has assumed  
10 over the last few years virtually all if not all of the tasks  
11 that Mr. Mazzamuto was doing before.

12 A My understanding again is that she's been doing much  
13 more of the supervisory work that goes on there.

14 MR. ANGINO: I have no further questions.

15 MR. WOLGEMUTH: I don't either. All done. Thanks,  
16 Doctor.

17 (Whereupon, the deposition was concluded at 4:15  
18 p.m.)  
19  
20  
21  
22  
23  
24  
25



1 COUNTY OF LANCASTER :  
2 COMMONWEALTH OF PENNSYLVANIA : SS

3 I, Lorraine C. Frick, a Notary Public, authorized to  
4 administer oaths within and for the Commonwealth of  
5 Pennsylvania, do hereby certify that the foregoing is the  
6 testimony of DOUGLAS BOWER, M.D.

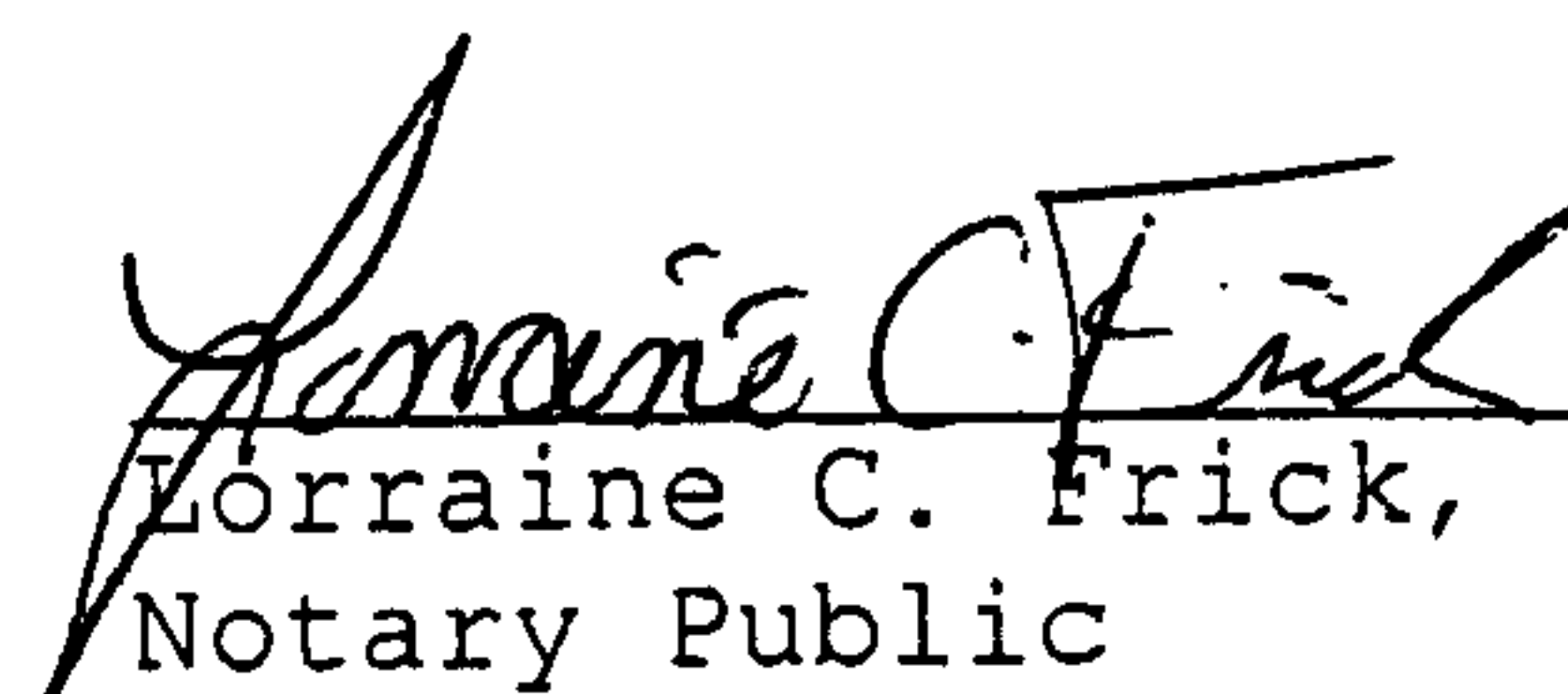
7 I further certify that before the taking of said  
8 deposition, the witness was duly sworn; that the questions and  
9 answers were taken down stenographically by the said  
10 Reporter-Notary Public, and afterwards reduced to typewriting  
11 under the direction of the said Reporter.

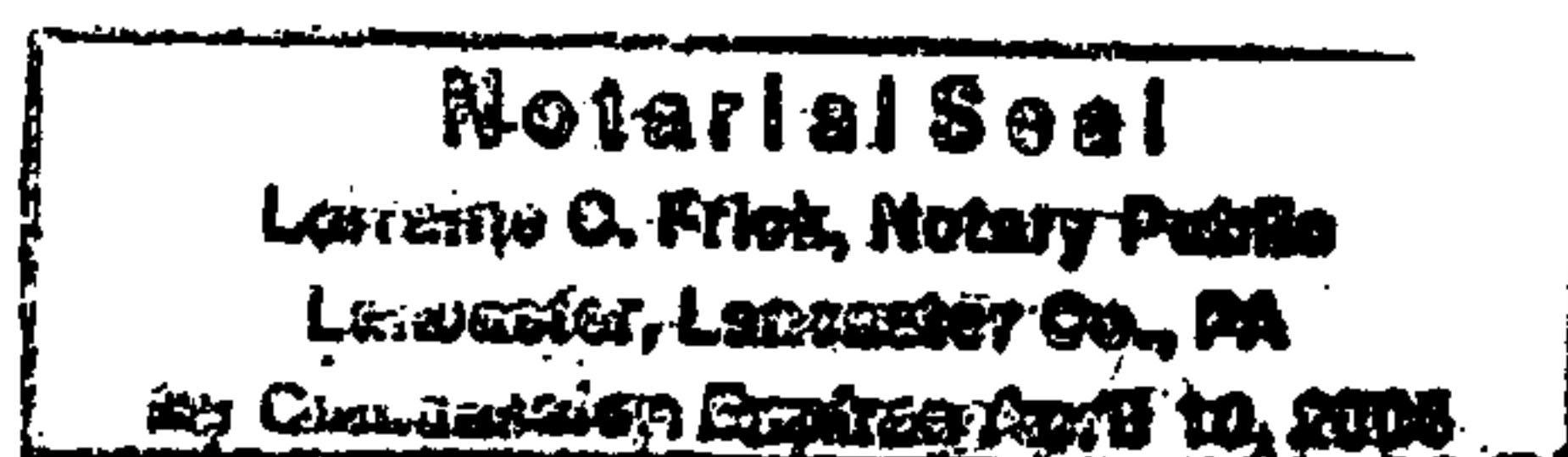
12 I further certify that the said deposition was taken  
13 at the time and place specified in the caption sheet hereof.

14 I further certify that I am not a relative or  
15 employee or attorney or counsel to any of the parties, or a  
16 relative or employee of such attorney or counsel, or  
17 financially interested directly or indirectly in this action.

18 I further certify that the said deposition  
19 constitutes a true record of the testimony given by the said  
20 witness.

21 IN WITNESS WHEREOF, I have hereunto set my hand this  
22 2th day of April, 2002.

23   
24 Lorraine C. Frick, Reporter  
25 Notary Public





UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT COURT OF PENNSYLVANIA

VINCENZO MAZZAMUTO,  
Plaintiff,

v.

UNUM PROVIDENT CORPORATION;  
PAUL REVERE LIFE INSURANCE  
COMPANY; and NEW YORK LIFE  
INSURANCE COMPANY  
Defendants

CIVIL ACTION – LAW

NO. 1:CV-01-1157

JUDGE KANE

JURY TRIAL DEMANDED

**PLAINTIFFS' TRIAL WITNESS LIST**  
**PURSUANT TO F.R.C.P. 26(a)(3)**

**Fact Witnesses**

Plaintiff Vincenzo Mazzamuto  
501 Limestone Road  
Carlisle, PA 17013

Gerarda Mazzamuto  
501 Limestone Road  
Carlisle, PA 17013

Melissa Mulry  
18 Chestnut Street  
Worcester, MA  
UnumProvident employee

John Clarke, M.D.  
Unum consultant

John W. Fogarty  
18 Chestnut Street  
Worcester, MA (UnumProvident employee)

Antonino Mazzamuto  
501 Limestone Road  
Carlisle, PA 17013



Francesco Mazzamuto  
501 Limestone Road  
Carlisle, PA 17013

Angelo Mazzamuto  
Indiana University of Pennsylvania  
c/o 501 Limestone Road  
Carlisle, PA 17013

Antonia Tripoli  
22 Carlisle Street  
New Bloomfield, PA 17068

Pam Hagerich  
432 Limestone Road  
Carlisle, PA 17013

Vincenzo Randazzo  
52 East Penn Street  
Carlisle, PA 17013

James S. Marshall  
1003 Forge Road  
Carlisle, PA 17013

Therese A. Sindelar  
New York Life  
PO Box 6916  
Cleveland, OH 44101

Salvatore Ferrigno  
3993 Huntington Pike, Suite 105  
Huntington Valley, Pennsylvania 19006  
(215-938-0572)

**Expert Witnesses**

Gordon K. Rose, CLU, ChFC  
735 Virginia Rail  
Kiawah Island, SC 29455

Douglas Bower, M.D.  
Masland Associates  
220 Wilson St, Suite 109  
Carlisle, PA 17103



Stanley E. Schneider, Ed.D.  
412 Erford Rd.  
Camp Hill, PA 17011  
(Social Security Disability exam)

Patrick Fergal McSharry  
(former Unum employee)

Robert C. Steinman, M.D. (as on cross)  
Defendant expert

Abram Hostetter, M.D. (as on cross)  
Defendant expert

Ted Kasenske, M.D.  
The Pain Management Clinic  
of Carlisle Hospital  
5 Sprint Drive  
Carlisle, PA 17013

**Depositions Pursuant to**  
**F.R.C.P. 26(a)(3)(B)**

Plaintiffs reserve the right to supplement this list.

Respectfully submitted,

ANGINO & ROVNER, P.C.

---

Richard C. Angino, Esquire  
I.D. No. 07140  
4503 N. Front Street  
Harrisburg, PA 17110  
(717) 238-6791  
Attorney for Plaintiff

Date



MAZZAMUTO, VINCENZO

PAINCLINIC

MR #030320

DATE: 11/13/96

This is a 41 year old gentleman with spinal stenosis. He states he has been doing relatively well after the last epidural steroid injection. He continues to take the gabapentin and feels this is helping his pain. Again, he does not want to proceed with an operation and he states that he will give me a call whenever his pain returns and he will request another injection.

TDK/vfn

D: 11/13/1996 - 03:21 pm

T: 11/13/1996

cc Dr. Bower

Ted D. Kosenske, M.D.

Dx

Proc

Pt#

FC

CC

NYLCL00100



MAZZAMUTO, VINCENZO

PAIN CLNC

MR #030320

DATE: 10/03/96

This is a 41-year-old gentleman with spinal stenosis. He states that his back pain is better but he is still having burning down his legs. I want to increase his Gabapentin to 300 mg t.i.d. to 600 mg t.i.d. I will see him in one month. Interestingly, he states that his irritable bowel syndrome is much improved on the Gabapentin.

TDK/bks

D: 10/03/1996 - 04:07 pm

T: 10/04/1996

cc Dr. Douglas J. Bower

Ted D. Kosenske, M.D.

Dx:

Proc:

Pt. #:

FC:

CC:

NYLCL00101

MAZZAMUTO, VINCENZO

PAIN CLNC

MR #030320

DATE:

PERFORMED BY: Dr. Ted D. Kosenske

This is a 41-year-old gentleman with spinal stenosis. He states he is approximately 40% better after the first two lumbar epidural steroid injections. We will proceed with a third injection today.

**PROCEDURE:** Lumbar epidural steroid injection.

Sterile prep was performed with the patient in the sitting position. An 18 gauge Tuohy needle was then placed at the L3/L4 interspace. Using loss of resistance technique, the epidural space was located without difficulty. There was negative aspiration of blood or CSF. There were no paresthesias elicited. Ten cc of preservative free normal saline with 80 mg of Depo-Medrol were slowly injected into the epidural space without patient complaint. The patient tolerated the procedure well without complications. I will see him in a few weeks. I am going to start him on a trial of gabapentin 300 mg t.i.d. He does complain of numbness and he is unsure whether this is resolving. He also states emphatically that he does not want an operation at this time. Again, I will see him in a few week.

TDK/lmw

D: 08/20/1996 - 04:28 pm

T: 08/20/1996

cc Dr. Douglas J. Bower

Ted D. Kosenske, M.D.

Dx

Proc

Pt#

FC

CC

NYLCL00102





UNUM.

*Protecting everything you work for*

January 22, 2001

Carlisle Hospital  
Attn: Medical Records Department  
246 Parker Street  
Carlisle, PA 17013

Re: Vincenzo Mazzamuto  
DOB: 5/25/55  
Soc. Sec # 196-56-5744

Claim #13-h3236167-002

Dear Medical Records:

Vincenzo Massamuto is a patient of yours and a client of ours. Your assistance is requested in connection with a claim for disability presented by the above named insured. Enclosed is a signed authorization enabling you to release this information to us.

We are interested in obtaining a copy of the medical records, including **history, office notes, diagnostic tests results consultations objective testing admission/discharge summaries and chart notes** on the above named policyholder. We would appreciate your immediate attention to this request. Should you have any questions, or if a fee is involved please call me at 1-508-929-6840. A Tax Identification number is required for any prepayment requests. Our FAX number is 508-751-7430.

Thank you for your cooperation.

Sincerely,

Robin L Andrews

Route # 775-52

Enc. Authorization

UNUMPROVIDENT CORPORATION

UnumProvident Life Insurance Company as administrator for New York Life Insurance Company  
18 Chestnut Street, Worcester, Massachusetts 01608-1528

508.799.4441

Unum is the marketing brand of UnumProvident Corporation

Exhibit I



Apr-15-97 14:25 ftab

610 660



The Company You Keep®

New York Life Insurance Company

April 15, 1997

New York Life Insurance Co.  
Attn: Gloria Phelps

Re: Claim # N 214 282 Policy # H3 236 167

Dear Gloria:

In response to our conversation regarding my client Vincenzo Mazzamuto, claim # N 214 282, I want to state that at the time of delivery of Mr. Mazzamuto's policy, I found an amendment attached to his policy to be signed by the PI and returned to the G.O.. The G.O. explained to me that the amendment was issued due to the medical history of my client found from his APS.

I reviewed the amendment which states that Q.#3L of Non-Med should be answered intended to be yes. At that time, I wondered why the policy was issued with such an amendment, because I was unaware of any medical history related to Mr. Mazzamuto.

At the time of delivery I asked Mr. Mazzamuto to sign the amendment before taking his policy explaining to him why the company attached this amendment to his policy. My client was surprised to hear that his APS (Attending Physician Statement) said that he had a back problem because he was never told by his doctor that he actually had a back problem. My client did go to his family doctor to have a check-up on his back due to some minor back discomfort, but after a few days he felt fine, therefore he never went back to his doctor and was never informed from his doctor that he had any problems.

My client's doctor never notified my client of any problems, therefore he thought that everything was O.K. with him and there was no problems with his back.

In conclusion, I want to let you know that I have known Mr. Mazzamuto for a long time and that I know he put this claim through in good faith due to an accident not related to any previous medical history. As a matter of fact, he has fully recovered due to his accident and is back to work full-time. So, clearly he has not intended to put this claim through as any kind of fraud.

It is clear that NYL knew of my client's medical history before issuing his policy.

New York Life Insurance Company  
New York Life Insurance and Annuity Corporation  
(A Delaware Corporation)  
51 Madison Avenue, New York, NY 10010

APR 15 '97 15:49

610 660 0413

PAGE.02

NYLCL00211

Exhibit J



Apr-15-97 14:25 f

610 0413

P.03



The Company You Keep®

New York Life Insurance Company

I hope you understand my statement and can take care of this matter in a good NYL tradition.

Thank you for your time and cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Salvatore Ferrigno".

Salvatore Ferrigno

NYL CL 00210

New York Life Insurance Company  
New York Life Insurance and Annuity Corporation  
(A Delaware Corporation)  
51 Madison Avenue, New York, NY 10010

000 15 100 15:40

610 600 0413

PAGE 03

Date Composed: 01-15-2001 03:02 PM  
 Tracking No: Wor-01 01 15-150234 MMAR

## Field Service Request Transmittal Form

Field Investigator:

Field Investigator:

Assign Date:

Completion Date:

Region (New)

State

### Claimant Information Section

Claimant Name:	Vincenzo Mazcamuto	Home Phone:	717-243-0383
Street 1:	501 Limestone Road	Date of Birth:	05/25/55
Street 2:		SSN#:	196-56-5744
City, State & Zip:	Carlisle, PA 17013	Occupation:	Restaurant Owner
		Diagnosis	Cardiac

### General Detail Section

Claim Rep Name:	Melissa Magner	Previous Claim Rep:	Melissa Magner
Claim Rep Phone:	6710		Cardiac
Consultant:	Diane Cahill	Consultant Phone Ext:	6556
Cost Code	8169	Claim Rep Mail Code	
Priority (in days):	<input type="radio"/> 15 <input checked="" type="radio"/> 30 <input type="radio"/> 60	Represented by Attorney:	<input type="radio"/> Yes <input checked="" type="radio"/> No
Prior Field Handling:	<input type="radio"/> Yes <input checked="" type="radio"/> No	Attachments	<input checked="" type="radio"/> Yes <input type="radio"/> No
Name of Last Field Rep:		Joint Referral:	<input type="radio"/> Yes <input checked="" type="radio"/> No
Contact Before Investigation:	<input type="radio"/> Yes <input checked="" type="radio"/> No	If Joint Referral is Yes, name of GENEX Rep:	

Toll Free Phone Numbers: Worcester: 888-226-7959 ; Portland: 800-228-4568 ; Glendale: 800-424-2008 ; Chattanooga: 800-451-8464

### Employer Information Section

Employer Name:	Vinny's Restaraunt	Street 1:	330 South Hanover Street
Business Phone:	717-249-6417	Street2:	
		City, State & Zip:	Carlisle, PA 17013

NYLCL00526

Exhibit K



## Reason for Referral

Interview 3rd Party: <input type="checkbox"/> Yes	Name of 3rd Party:	Relation to Insured:	Special Handling: <input type="radio"/> Yes <input type="radio"/> No
Interview MD: <input type="checkbox"/> Yes Interview MD: <input type="checkbox"/> Yes <input type="checkbox"/> Current status - TX <input type="checkbox"/> Functional capabilities <input type="checkbox"/> History <input type="checkbox"/> Obtain med records <input type="checkbox"/> Obtain surg schedule <input type="checkbox"/> Pre-existing condition <input type="checkbox"/> Prognosis <input type="checkbox"/> Rehab <input type="checkbox"/> R.T.W. in another occ. <input type="checkbox"/> TD vs PD <input type="checkbox"/> Other	Interview Employer: <input type="checkbox"/> Yes Interview Employer: <input type="checkbox"/> Yes <input type="checkbox"/> Agent interview <input type="checkbox"/> Collect overpayment <input type="checkbox"/> Duties <input type="checkbox"/> Income <input type="checkbox"/> Position held open <input type="checkbox"/> Retrain for other position <input type="checkbox"/> Salary Cont. <input type="checkbox"/> W.C. Info. <input type="checkbox"/> Other	Interview Insured: <input checked="" type="checkbox"/> Yes Interview Insured: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Agent interview <input type="checkbox"/> BOE <input type="checkbox"/> Collect Overpayment <input type="checkbox"/> Complete job description <input type="checkbox"/> Contestable <input type="checkbox"/> Continue claim interview <input type="checkbox"/> Determine if IME is advisable <input checked="" type="checkbox"/> Extent of disability <input type="checkbox"/> First handling <input type="checkbox"/> Initial claim interview <input type="checkbox"/> Late notice <input type="checkbox"/> Obtain and review documents <input type="checkbox"/> Reformation/Recision action <input type="checkbox"/> Rehabilitation <input type="checkbox"/> Residual <input type="checkbox"/> Unannounced Visit <input type="checkbox"/> Waiver of premium <input checked="" type="checkbox"/> Other Extent of disability Other	Special Handling: <input type="checkbox"/> Yes <input type="checkbox"/> No Miscellaneous: <input type="checkbox"/> Yes Miscellaneous: <input type="checkbox"/> Yes <input type="checkbox"/> Contestible death <input type="checkbox"/> Waiver of premium <input type="checkbox"/> Legal Issue <input type="checkbox"/> Other

## REMARKS:

Please do an unannounced visit to the insured's restaurant. Is he working? Who is running it as you can see? Is it a busy restaurant? What is the size of the restaurant? Please then set up an appointment to meet with the insured. Insured had a heart attack in July. It doesn't appear he had any complications and it would appear that he would be back to work if the heart was his only impairment. However, the ap indicates anxiety and back pain. The insured's symptoms are all due to his back. He claims that he hurt his back when being put into the ambulance for his MI. However, the back problem existed before this. His first claim was for his back. Please find out exactly what his limitations and restrictions are. He was working before with this back problem, why can he not work now. Please find out what his current treatment plan is. What is he on for medications? Is he seeing anyone for his anxiety problems? Thank you, Melissa

## Claim Information Section

Date of Disability / Loss	Claim Close Date	Claim Reopen Date	Decision Date	Gen Suspense Date	Pmt Suspense Date	
07/22/2000						

Claim Code	Form No.	Amount	Benefit Period	Elim Period	Issue Date	Residual / Other
1. 13h32361670 02	9132	\$5,000.00	65	90	08/28/93	

NYLCL00525







## ACTION PLAN &amp; LO

## Individual Disability Claims

INSURED: Vincenzo MazzamutoHOME TELEPHONE: 717 2430383ADDRESS: 501 Limestone RdWORK TELEPHONE: 1CITY: CarlisleSTATE: PA ZIP: 17013DOB: 5 / 25 / 55 SSN: 190 156 15244 DATE OF DISABILITY: 7 / 22 / 00☒ Sickness or ☐ Accident Received by Claim Rep: 1 / 1 / DATE OF NOTICE: 1 / 1 /DIAGNOSIS: Heart attack, anxiety, back painOCCUPATION AT CLAIM: Rest. owner / presidentAttorney Representation: Name  Tel. 1

## COVERAGE INFORMATION

CLAIM #	ISSUE DATE	FORM	ELIM PERIOD	MONTHLY BENEFIT	BENEFIT PERIOD	OWN CIG PERIOD	RESIDUAL
<u>43230167</u>	<u>8-28-93</u>	<u>9132</u>	<u>90</u>	<u>5000</u>	<u>65</u>	<u>yes</u>	<u>yes</u>

## Exclusions/Riders/Waivers

☐ Yes - Guarantee Issue ☐ Yes - FICA Expected RTW 1 / 1 / RTW exceeded 6 Months? ☐ Yes☐ Yes - Contestable ☐ Yes - ERISA ☒ Yes - Late Notice New Notice Call 1 / 1 / 01

## RECOMMENDED ACTION

☐ Employer Letter☐ APS  ☐ DEQY☐ SS Letter☐ FICA Letter☒ AP Rec  ☐ SEQY☐ License Check☒ Field Referral☒ Hosp Rec  ☐ Casualty Index Bureau ☐ Waiver of Premium☐ Reservation of Rights☐ W/C Rec  ☐ Data Base Search (super bureau etc)☐ GENEX Referral☐ Other Carriers  ☐ Financial Review☒ Verify occ.☐ HMO/PPOMaj Med  ☐ Tax Returns/4506 ☐ Request occ. desc from FY☐ Third Party Action☐ Other recommendations (see below)

NYLCL00561

Recommendations: get recs - back to 98  
(restaurant) write Mr to (I) send to field unannounced to  
get 001.CLAIM REPRESENTATIVE: Melissa Magner DATE: 1/8/01CONSULTANT: Deane Cahel DATE: 1/8/01